IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO. 889 OF 1995**.**

M/s Alcon Pharmaceuticals (P) Ltd... Petitioner.
V/s.
The International Air Port
Authority of India & anr ... Respondents.

Mr. Parinit Saratkar i/b Shukla & Shukla for the petitioner.

Ms.A. Munim with H.K. Bhalerao i/b Rajesh Kothari & Co. for the respondents.

CORAM : V.C.DAGA, J.

DATED : 25.1.2006.

P.C. :

. Being aggrieved by the decision of the 2nd respondent rejecting application preferred by the petitioner for waiver of demurrage charges accrued on the cargo comprising of 2 drums of L-Dopa, petitioner has filed this petition under Article 226 of the Constitution of India.

Submissions:

2. The petitioner contends that the impugned decision rejecting waiver of demurrage charges dated 6.4.1995 levied on the said consignment of L-Dopa for the period 1009 days from 29.11.1991 to 3.9.1994 inspite of detention certificate dated 28.10.1994 issued by the Custom Authorities having been submitted to the respondent No.1, is liable to be

set aside, as it suffers from non-application of mind and is contrary to the legitimate expectation of the petitioner-Company that the respondent would act fairly and judicially in the matter.

3. According to the petitioner, they could not clear the goods for over a period of 3 years because of the fault on the part of the custom authorities. They were not at fault for the delay in clearing the goods. According to the petitioner, initially, the custom authorities insisted on full clearance of the goods which prevented the petitioner from clearing their goods. This action, according to the petitioner was illegal. The customs authorities ultimately, by judicial order, were directed to issue detention certificate in respect of said consignment. Petitioner contends that having submitted detention certificate to the respondent along with all the documents as required by them, it was obligatory on the part of the respondents to waive demurrage charges. Petitioner submits that for the fault of the custom authorities petitioner cannot be made to pay demurrage charges to the respondents.

Per Contra: 3. Learned Counsel for the Respondent submitted that irrespective of the fact whether or

not the goods were detained because of the alleged fault of the custom authorities, respondent No.1, being the custodian of the goods, was well within its power to claim the demurrage charges on the said goods of which the respondent No.1 had taken care as custodian. It is submitted that the contention raised by the petitioner that there was an apparent mistake on the part of sellers' despatch department in sending some other goods or alleged mistake of the custom department in detaining goods is of no relevance at all.

4. The respondent specifically denied that the petitioner immediately submitted the original copy of the said detention certificate to the respondents. According to them, they vide their letter dated 31.10.1994, 2.11.1994 and 10.1.1995 had requested the petitioner to submit the required documents. The petitioner instead entered into avoidable correspondence with the respondents. The respondents had written a letter to the customs authority to seek certain clarifications but the custom authorities did not give any clarification to the respondent with the result, respondents were finally left with no other option but to reject the application of the petitioner. Respondents, thus, submit that they rightly rejected the application of the petitioners for waiver of demurrage charges for

the reasons stated in letter dated 6.4.1995. That there is no provision in the policy framed by the Respondents to grant waiver of demurrage charges or to waive the demurrage charges where any fine/penalty is imposed/levied by customs authorities. In this case, according to the respondents, as a fact, custom authorities had levied penalty on the petitioner for not clearing goods..

5. According to the respondents, petitioner was unable to clear the goods for a period of 3 years for which respondents cannot be blamed. That the respondents did not commit any illegal act as alleged. As such, according to them, petition is devoid of any substance and the same is liable to be dismissed.

6. Respondents have placed reliance on the judgment of the Apex Court in case of **International Airport Authority of India vs. Grand Slam International and ors. (1995) SCC 151.**

Consideration:

7. Having heard rival parties, I find no substance in any of submissions

advanced on behalf of the petitioner. The act of the custom authorities, by no stretch of imagination can be said to be improper. Under section 155 of the Customs Act, all actions of the officers of the Government or Local Authorities or anything done by them or intended to be done in good faith, in pursuance of the customs Act and Rules or Regulations are protected.

8. The Division Bench of this Court had an occasion to consider identical situation and similar submissions advanced by the petitioner in the case of **Modern Rubber Industries vs. Union of India, 2003 (154) ELT 571 (Bom.).** In para 14 of the said judgment, this Court observed thus:

> . " Having considered the rival submissions advanced by the learned Counsel for the Revenue. Under section 155 of the Act, all the actions of the officers of the Government or Local Authorities for anything done, or intended to be done in good faith, in pursuance of the Customs Act and Rules or Regulations are protected. None of the authorities have recorded any finding saying that the orders passed by the authorities below were malafide and that they were actuated by malice. If none of the orders were malafide and if each of the orders of the authorities below can be justified on the ground of bonafide action, then, in that event we are of the opinion that the Customs Department cannot be saddled with the warehousing charges.

9. The Division Bench of this Court had again considered similar situation with identical

submissions advanced by the petitioner in the case of Santogen Silk Mills Ltd. & anr. vs. Union of India & ors. in (A.S.) Writ Petition No.3553 of 1998, dated 28.4.2005 (unreported), wherein, it was held that unless malafides on the part of the authorities are proved, the Customs Authorities cannot be saddled with warehousing charges which have to be paid by the petitioner even when, ultimately, custom authorities accept the contention of the assessee after long drawn litigation. The same principle would be available in the facts and circumstances of the present case.

10'. The Apex Court in the case of **Board of Trustees of the Port of Bombay vs. I.G. Supplying Co. reported in AIR 1977 SC 1622,** has held that even though the delay in clearing the goods was not due to negligence of the importer for which he could be held responsible, yet he cannot avoid the payment of demurrage charges as the rates imposed are under the authority of law, the validity of which cannot be questioned. The Apex Court has reiterated the same proposition of law in the later decision in the case of International Airport Authority of India vs. Grand Slam International 1995 (77) ELT 753, and in the case of Trustees of the Port of Madras vs. Nagavedu Lungi & Co. 1995(80) ELT 241.

11. In the above view of the matter, I am of the considered view that the delay in clearance of the goods cannot be attributed to the Customs Department. Alternatively, even if cause of delay is attributed to them, even then petitioner cannot escape its liability. They cannot be absolved of their obligation to pay the demurrage charges payable on the goods imported by the petitioner, since no malafides are being attributed to the customs department. The petition is, thus, devoid of any substance.

. In the result, petition is dismissed. Rule is discharged with no order as to costs.

(V.C.DAGA,J.)